

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 956
Case No. 01-15MA
(Amendment to the Zoning Map for Tivoli Partners, L.L.C.)
March 11, 2002

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on December 17, 2001, to consider an application from the Department of Housing and Community Development (on behalf of the Redevelopment Land Agency) and Tivoli Partners, L.L.C. for review and approval of an amendment to the Zoning Map of the District of Columbia from R-4 to R-5-B and C-3-A for Lots 7-16, 35-43, 48-52, 59-64, 70-73, and 804, as well as the public alleys to be closed in Square 2837, pursuant to Section 102 of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

FINDINGS OF FACT

1. The property that is the subject of this application, Lots 7-16, 35-43, 48-52, 59-64, 70-73, and 804 in Square 2837 (the "Subject Property"), as well as the public alleys to be closed in Square 2837. Square 2837 is bounded by Fourteenth Street, N.W. on the west, Park Road, N.W. on the south, Holmead Place, N.W. on the east, and Monroe Street, N.W. on the north. The Subject Property is currently owned by the RLA Revitalization Corporation, a subsidiary of the National Capital Revitalization Corporation ("NCRC"), consists of approximately 99,022 square feet of land area (2.27 acres), and is currently vacant.

2. Tivoli Partners L.L.C. (hereinafter "Tivoli Partners" or "applicant") and the District of Columbia entered into an Exclusive Rights Agreement ("ERA") for the redevelopment of Square 2837 on June 29, 2000. The proposed rezoning of the property will allow for the redevelopment of Square 2837 in accordance with the terms of the ERA and the Fourteenth Street Urban Renewal Plan. Tivoli Partners filed an application with the Zoning Commission ("Commission") on June 19, 2001, for review and approval of an amendment to the Zoning Map of the District of Columbia.

3. The Zoning Commission unanimously agreed to set the case down for a public hearing at its September 17, 2001, public meeting. The Zoning Commission held

a public hearing on the above-mentioned application on December 17, 2001, which was conducted in accordance with the provisions of 11 DCMR § 3022.

4. At the December 17, 2001, public hearing, the Commission granted party status to the Gala Hispanic Theater and Save the Tivoli, Inc. ("STI"). The Commission denied the party status requests of St. Augustine School and The Greater Washington Urban League, citing the fact that these organizations failed to describe how they would be particularly aggrieved or affected by the proposed application in a manner that was different than a member of the general public.

5. The Subject Property is located in the Columbia Heights neighborhood. The Subject Property is also located in the mixed-use medium density residential and medium density commercial land use category on the Generalized Land Use Map of the District of Columbia Comprehensive Plan. The Subject Property is currently vacant except for a community garden.

6. The applicant proposes to amend the Zoning Map in order to change the zone district of the Subject Property from R-4 to C-3-A and R-5-B¹. The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a number of conversions of dwellings into dwellings with two or more families. The R-4 District permits a maximum height of 40 feet and a maximum lot occupancy of 60% for a row dwelling, flat, church, or public school and 40% for all other structures. The C-3-A District permits a maximum height of 65 feet, a maximum lot occupancy of 100% for non-residential use, and a maximum floor area ratio (FAR) of 4.0 of which up to 2.5 FAR may be commercial. The R-5-B District permits a maximum height of 50 feet, maximum lot occupancy of 60%, and a maximum FAR of 1.8.

7. As a result of the proposed rezoning, the applicant will be able to develop a mix of uses on the Subject Property that would include a grocery store along Park Road and residential units along Monroe Street in conformance with the ERA.

8. The area proposed to be rezoned to the C-3-A District includes the portion of Square 2837 that is intended to be developed for retail and commercial use. This area includes approximately 348 feet of frontage along Park Road, approximately 179 feet of frontage along Holmead Place, and approximately 62 feet of frontage on Monroe Street adjacent to the existing C-3-A District. (Exhibit 48)

9. The area proposed to be rezoned to the R-5-B District includes the portion of Square 2837 that is intended to be developed for residential use. This area includes

¹ The initial application sought to rezone the entire Subject Property from the R-4 to the C-3-A District. In consultation with the Office of Planning, the applicant revised the proposed Zoning Map Amendment application at the December 17, 2001, public hearing. See Transcript of December 17, 2001, Public Hearing ("Tr.") at pp. 17-18.

approximately 388 feet of frontage along Monroe Street and approximately 94 feet of frontage along Holmead Place. (Exhibit 48)

10. The proposed rezoning is fully consistent with and fosters the goals and policies stated in various elements of the District of Columbia Comprehensive Plan.

- Land Use Element –
Section 1108 of the Comprehensive Plan supports “[p]romot[ing] the development of new multi-neighborhood commercial centers in areas where residents now travel long distances for food and other shopping services including on-going efforts to encourage large food stores to locate in these areas” (10 DCMR § 1108.1(e))

The Subject Property’s close proximity to the new Columbia Heights Metro Station makes it further compatible with the Land Use Element of the Comprehensive Plan. The Land Use Element directs development efforts be concentrated near Metrorail Station areas that offer the potential for growth. (10 DCMR § 1134.1) The largely vacant Subject Property in the Columbia Heights neighborhood is an ideal candidate for growth with the necessary nearby residential base to support the commercial development that would be afforded by the requested rezoning. Currently, residents of this part of Columbia Heights are without a large grocery store and through the requested rezoning such a need can be met. (Exhibit 2, p. 7)

- Transportation Element –
The Comprehensive Plan encourages, “land use arrangements that simplify and economize transportation services, including mixed-use zones that permit the co-development of residential and non-residential uses to promote higher density residential development at strategic locations, particularly near appropriate Metrorail stations.” (10 DCMR § 502.2(a))

The Zoning Map Amendment will permit the long lacking commercial services to be provided for existing residents in this area. The combination of a new Metro Station and the quality services needed to support the residents of Columbia Heights will help enrich this community. The commercial development will encourage investment in housing, both new construction and the renovation of existing housing stocks. As this neighborhood becomes more amenable to its residents, more housing will be required, both new construction and refurbishing of existing residences. (Exhibit 2, p. 8)

- Housing Element –
The Housing Element indicates that residential development should be encouraged near Metrorail Stations. (10 DCMR § 302.2 (d))

The requested Zoning Map Amendment will allow for neighborhood retail uses, the minimum commercial development necessary to support existing and new residential

development in Square 2837, within two blocks of the Columbia Heights Metro Station. (Exhibit 2, pp. 8-9)

- Economic Development Element –
The Economic Development Element of the Comprehensive Plan emphasizes the importance of economic development even outside of the Central Employment Area. The Comprehensive Plan notes the policies to:
 - “create jobs, enhance residential neighborhoods and attract businesses and consumers from the entire region.” (10 DCMR § 200.11(b).
 - “. . . increased emphasis should be placed upon commercial development in traditionally neglected and underserved communities, such as Anacostia, H Street, N.E., *14th Street, N.W. (Columbia Heights)*, and Georgia Avenue, where job creation is a priority. (10 DCMR § 205.2(i), emphasis added)
 - “Action 27: Focus Business Activity Near Neighborhood Metro Stations – Provide public and private incentives for investment in the areas around neighborhood Metro Stations, targeting both existing stations like Anacostia and *newly constructed stations such as Columbia Heights*. These Metro stations will serve as the primary anchors for economic development in neighborhoods, with an emphasis on promoting community shopping facilities, banks, and related office, commercial, retail and tourist activity to expand businesses, jobs and services. (10 DCMR § 209.6(1), emphasis added)

The requested Zoning Map Amendment will allow for controlled commercial development. The increased commercial activity that would accompany the requested Zoning Map Amendment would provide increased job opportunities as well as strengthen the surrounding residential areas by providing much needed commercial uses to serve the Columbia Heights neighborhood. (Exhibit 2, p. 9 and Tr. pp. 18-19)

- Historic Preservation Element -
The Comprehensive Plan includes the goal “to preserve the important historic features of the District while permitting new development that is compatible with those features.” (10 DCMR § 801.1)

Through the commercial development of Square 2837, the necessary economic incentives will be created to allow both the preservation of an important historic building, as well as commercial development that is compatible with the historic features of Square 2837. (Exhibit 2, p. 9)

11. The proposed Zoning Map Amendment is fully consistent with the various goals and policies of the Ward 1 Element of the Comprehensive Plan. One of the major objectives of the Ward 1 Plan is the creation of needed commercial services, but not at the cost of encroachment on residential communities. (10 DCMR § 1201.1(a)) The

requested Zoning Map Amendment will not harm existing residential, but instead will allow existing residential development to survive and thrive. As stated above, currently that portion of Square 2837 that would be subject to this Zoning Map Amendment is vacant and the remainder of the square is improved with empty structures in need of attention and repair. Under the current zoning, new development has not been forthcoming. Should the requested change of zoning to R-5-B and C-3-A be approved, it will not prevent the construction of housing, but will actually stabilize the existing residential neighborhood by providing necessary services as well as arts and cultural uses.

Additionally, the Columbia Heights Metro Station area is specifically singled out as a “Howard Gateway area” by Section 1202.1(b) of the Comprehensive Plan. The Ward 1 Plan indicates that Howard Gateway areas should get special attention for redevelopment. (Exhibit 2, p. 10)

12. The proposed Zoning Map Amendment is also fully consistent with the Generalized Land Use Map designation of the Subject Property as mixed-use medium density residential and medium-density commercial. (Exhibit 2, p. 10)

13. The proposed Zoning Map Amendment is fully consistent with the Fourteenth Street Urban Renewal Plan (“Urban Renewal Plan”). The Urban Renewal Plan designates Square 2837 to be in a Major Community Service Center (“MCSC”) area. The Urban Renewal Plan intended that a MCSC include a major concentration of uses providing employment opportunities, high-density housing, and retail and consumer services to a major portion of the northern sector of the District of Columbia in conjunction with a subway station. The Urban Renewal Plan lists the major uses in a MCSC to include high-density residential, retail and service commercial facilities, department stores, and shopping centers. The existing R-4 zoning of the Subject Property is inconsistent with the MCSC designation. The proposed R-5-B and C-3-A Districts are generally consistent with the Urban Renewal Plan’s MCSC designation of the Subject Property. (Exhibit 2, pp. 2-4)

14. The applicant offered testimony and evidence from Joseph Horning, Jr., Vice-President of Horning Brothers, a General Partner of Tivoli Partners; Deborah Linn, Executive Vice President of the RLA Revitalization Corporation, a subsidiary of NCRC; and the following experts: Alan Mushinsky, Architect, MR+A Architects, and Louis Slade, Traffic Engineer, Gorove/Slade Associates.

15. Joseph Horning, Jr. introduced the members of the applicant’s team and provided background information regarding the development of the Subject Property. Mr. Horning also discussed the applicant’s commitment to developing projects that are important to the social fabric of their surrounding communities. Mr. Horning noted the significant amenities that would be provided to the Columbia Heights neighborhood as a result of this Zoning Map Amendment:

- Revitalization of the 14th Street corridor and introduction of economic development to this portion of Columbia Heights with increased sales and real estate tax revenue for the District and the creation of job opportunities for District residents and Local, Small, and Disadvantaged Business Entities (LSDBEs), all in adherence to the Columbia Heights Community Planning Charrette of 1997;
- Restoration of the historic Tivoli Theater with an adaptive reuse of the interior space to allow for the restoration and replication of early 20th century neo-classical murals;
- Establishment of the permanent home for the Gala Hispanic Theater and the creation of a 250-seat theater that will be offered to Gala's cultural partners: WPAS, the African Continuum Theater, and Sol Y Sol Youth Theater;
- Creation of a modern Giant Food Supermarket in Columbia Heights that will allow Giant Foods to offer approximately 15,000 square feet of its former outdated store, located two blocks away, to be devoted to education, health training, and arts uses for residents of Columbia Heights, as the community deems appropriate; and
- Development of a blighted lot into a community asset that will create new homeownership opportunities, as well as retail uses and services not presently available in the neighborhood.

(Exhibit 32, Testimony of J. Horning, Tr. pp. 24-28)

16. Mr. Horning discussed the comprehensive community dialogue process that the applicant undertook regarding the project. In the past two years, the applicant made six presentations to each of the neighboring Advisory Neighborhood Commissions, ANC 1A and 1B. In addition, the applicant made presentations to the Monroe Street Association and the Development Corporation of Columbia Heights on several occasions. The applicant mails a bi-monthly Community Update to over 300 residents and posts the Community Update on four neighborhood e-mail chat boards. Mr. Horning noted the significant number of community organizations that support the project, including: The Greater Washington Urban League, the Council of Latino Agencies, ACORN of Columbia Heights, D.C. Chamber of Commerce, D.C. Building Industry Association, Latino Civil Rights Center, Kelsey Senior Citizens Apartments, National Housing and Rehabilitation Association, Saint Augustine School, Shrine of the Sacred Heart, 1429 Girard Street Cooperative, The Fishing School, Columbia Heights Village Resident Council, African Americans with Physical Challenges, Fairmount Tenants Association, Hispanic Business Alliance, MANNA, For Love of Children, and the Columbia Heights Youth Club. (Exhibit 32, Testimony of J. Horning, Tr. pp. 28-29)

17. Mr. Horning also discussed the on-going historic preservation review process regarding the proposed development of the Subject Property. Mr. Horning noted that the Federal Section 106 Historic Review process was being conducted with the State Historic Preservation Officer, staff of the Historic Preservation Division of the Department of Consumer and Regulatory Affairs, the applicant, representatives of STI, and representatives of the District of Columbia Historic Preservation League. (Exhibit 32, Testimony of J. Horning, Tr. pp. 24, 26)

18. Deborah Linn of NCRC testified to the NCRC's role in working with the applicant and members of the Columbia Heights community regarding the development of the Subject Property. Ms. Linn noted that NCRC, along with the Office of the Deputy Mayor for Planning and Economic Development and the Department of Housing and Community Development is fully supportive of the project. Ms. Linn discussed how the proposed Zoning Map Amendment application would allow the Subject Property to become the center of an active and vibrant contributor in the Columbia Heights Neighborhood. The proposed rezoning will allow development of residential/supermarket/cultural and arts uses – with a significant historic preservation element – on the Subject Property, while remaining entirely compatible in use, size, and scale with the surrounding community. (Exhibit 31, Testimony of D. Linn, Tr. p. 22)

19. Ms. Linn noted the project's consistency with the Comprehensive Plan and the Urban Renewal Plan. She also reiterated that despite the Urban Renewal Plan's age, the goals for the development of the Subject Property are still entirely applicable and valuable today. (Exhibit 31, Testimony of D. Linn, Tr. p. 22)

20. Ms. Linn also noted that prior to the disposition of the Subject Property to the applicant, NCRC will engage in a public meeting process that will provide an opportunity for community comments regarding the entirety of the project to be made to NCRC. In addition, she noted that NCRC has the ability to place restrictions on the use and operation of the Subject Property as it deems appropriate. (Exhibit 31, Testimony of D. Linn, Tr. p. 23)

21. Alan Mushinsky, the applicant's architect, recognized by the Commission as an expert in architecture, testified regarding the proposed C-3-A and R-5-B Districts and the existing zoning districts surrounding the Subject Property. Mr. Mushinsky noted that the existing R-4 District is inconsistent with the Urban Renewal Plan, the Comprehensive Plan, and the Generalized Land Use Map. The R-4 District does not permit mixed uses such as food stores, retail, service uses, offices, and transitional residential zones. (Testimony of A. Mushinsky, Tr. pp. 39-40)

22. Mr. Mushinsky noted that approval of the proposed Zoning Map Amendment will help foster the revitalization of the area surrounding the Subject Property for commercial and residential uses. Mr. Mushinsky also stated that the

proposed zone districts would permit development that is consistent with the bulk, height, and character of buildings in the surrounding neighborhood. (Testimony of A. Mushinsky, Tr. pp. 43-44)

23. Mr. Mushinsky concluded that the proposed Zoning Map Amendment to the C-3-A and R-5-B Districts is consistent with the District of Columbia Comprehensive Plan and the Generalized Land Use Maps designation of the site as mixed-use medium density commercial and medium density residential. The proposed application provides for medium density mixed-use development, including a food store, retail, office space, cultural arts space, and medium density residential development. The Subject Property's location, one and a half blocks from a Metro Station and on a major transportation corridor into and out of the city, is consistent with the proposed zone districts. (Testimony of A. Mushinsky, Tr. p. 42)

24. Mr. Mushinsky also concluded that the proposed Zoning Map Amendment was entirely consistent with the Urban Renewal Plan's designation of the Subject Property as a MCSC. The proposed inclusion of retail and food stores on the Subject Property is in keeping with the MCSC designation for the site. (Testimony of A. Mushinsky, Tr. pp. 42-43)

25. Louis Slade, a principal with Gorove/Slade Associates, the applicant's traffic expert, recognized by the Commission as an expert in traffic engineering, by report and testimony stated that the proposed Zoning Map Amendment was consistent with the elements of the Comprehensive Plan that address transportation issues. Mr. Slade noted that the Comprehensive Plan calls for mixed-use development on arterial streets and that 14th Street is an arterial street. (Testimony of L. Slade, Tr. p. 46)

26. Gorove/Slade Associates prepared a Traffic and Parking Impact Study to address the potential traffic impacts that a C-3-A/R-5-B matter-of-right development would create on the Subject Property. Mr. Slade noted that their analysis also took into account the other development projects that are proposed for the Columbia Heights neighborhood. Mr. Slade stated that all intersections in the area surrounding the Subject Property currently operate at acceptable levels of service during peak periods and will continue to do so, with some retiming of signals in the area, if the proposed application is approved. Mr. Slade concluded that the proposed rezoning would not have a negative impact on the neighboring streets. (Exhibit 26, Testimony of L. Slade, Tr. pp. 48-49)

27. Mr. Slade also noted that a parking impact analysis was performed for the proposed rezoning of the Subject Property. Mr. Slade concluded that the Subject Property could provide adequate parking for the proposed zone districts that would satisfy the requirements of the Zoning Regulations as well as practical requirements for development on the Subject Property. (Testimony of L. Slade, Tr. pp. 49-50)

28. The Office of Planning (OP), in its preliminary report dated September 10, 2001, noted that the District of Columbia has been seeking the redevelopment of Square 2837 for over 30 years. The OP report agreed with the applicant's determination that the proposed Zoning Map Amendment supports the following elements of the Comprehensive Plan:

- Land Use Element, § 1108.1 (e) and § 1134.1;
- Transportation Element, § 502.2(a);
- Housing Element, § 302.2(d);
- Economic Development Element, §, 200.11(b);
- Ward 1 Plan Element for Economic Development, § 1201.1(a); and
- Historic Preservation Element, § 801.1.

The OP report also noted that all nine specific actions recommended in the Comprehensive Plan Ward 1 Economic Development Element, § 1203.1(v) are consistent with the general intent of the re-mapping proposal for Square 2837. (Exhibit 7, pp. 7-8)

29. The OP preliminary report also recommended that the applicant seek to retain some residential zoning along Monroe Street. OP requested that the applicant explore the possibility of:

- Requesting C-3-A zoning for the parcels in Square 2837 that are proposed for retail and commercial re-development. These would be the parcels facing Park Road, 14th Street, the western edge along Monroe Street, and the southern edge of Holmead Place; and
- Requesting the residential re-zoning from R-4 to R-5-B for the portion of the site that is proposed for residential re-development. These would be the parcels facing the central and eastern portions of Monroe Street and the northern edge of Holmead Place.

(Exhibit 7, pp. 9-10)

30. On December 7, 2001, OP submitted a final report addressing the applicant's proposed rezoning of the Subject Property to the R-5-B and C-3-A Districts, in accordance with OP's preliminary report. OP recommended approval of the rezoning application of Lots 7-16, 35-43, 48-52, 59-64, 70-73, and 804 and the public alleys within the Square to a combination of C-3-A and R-5-B Districts. The boundaries of the C-3-A District would generally be the portion of the site for which commercial use is planned and the boundaries of the R-5-B District would generally be the portion of the site for which residential use is planned. OP's recommendation was subject to OP's review of the final boundary lines for the proposed C-3-A and R-5-B Districts submitted by the applicant at or before the final public hearing in this case. (Exhibit 20, p. 2)

31. In testimony to the Zoning Commission at the public hearing, OP's representative noted that the existing Zoning Map for the area of 14th Street near the Subject Property does not have a uniform width of commercial zoning and that the proposed rezoning would be consistent with that pattern. OP's representative also noted that the mixed-use zoning designation for the site was consistent with the Columbia Heights Community Charrette Plan and various urban renewal plans from 1972 through the 1980s. (Testimony of S. Cochran, Tr. pp. 68-69)

32. The Department of Public Works, District Division of Transportation (DPW/DDOT) submitted a report dated December 17, 2001. In this report, DPW noted that the roadway network on 13th Street, N.W. near the Subject Property had changed since the initial Gorove/Slade Analysis on December 20, 2000. The DPW report noted that without an updated traffic impact analysis reflecting the current road network, DDOT could not analyze the future impacts of the application. DDOT recommended that the applicant conduct a traffic impact analysis using the current road network. (Exhibit 25)

33. ANC 1A adopted a resolution in support of the application at its December 12, 2001, public meeting. The unanimous ANC resolution urged the Zoning Commission to approve the revised Zoning Map Amendment with commercial and residential zoning for Square 2837. (Exhibit 24)

34. Ward 1 Councilmember Jim Graham submitted a letter to the Zoning Commission asking for the record to be reopened for submission of his letter in support of the proposed application. Councilmember Graham noted the applicant's responsiveness to concerns and issues raised by the community, District officials, and District agencies. In his letter, Councilmember Graham also noted the significant and widespread support for the application from various community organizations and individuals. Councilmember Graham stated that the proposed C-3-A zoning is essential to the long-term stability of the Columbia Heights neighborhood and that the proposed R-5-B zoning is considerate of the adjoining properties and the potential impact that it will have on existing homeowners. (Exhibit 44) The Commission waived its rules pursuant to 11 DCMR §§ 3000.8 and 3024.5 to accept Councilmember Graham's letter.

35. Stephen Green, a representative of the Office of the Deputy Mayor for Planning and Economic Development, presented testimony and submitted a letter on behalf of the Deputy Mayor in support of the application. Mr. Green noted that the application will allow mixed-use development on the site and that the presence of a grocery store on the Subject Property will assist in attracting other retail establishments along the 14th Street portion of Square 2837. Mr. Green also testified that mixed-use development on the site will provide needed resources and services to the Columbia Heights neighborhood and will strengthen the existing neighborhood and attract additional residential development to the neighborhood. (Exhibit 29, Testimony of S. Green, Tr. p. 85)

36. Rebecca Medrano, Managing Director of the Gala Hispanic Theater, by written submission and testimony, supported the application. Ms. Medrano noted that the proposed application will bring not only economic revitalization to Columbia Heights, but also a dynamic commercial and artistic life reflecting the rich ethnic diversity of the Columbia Heights neighborhood. Ms. Medrano testified that the Gala Hispanic Theater will provide a cultural anchor for development of the Subject Property by producing a full season of plays in Spanish and English, musical productions, poetry, dance performances, and free programs for children, seniors, and low-income families. Ms. Medrano concluded that the Gala Hispanic Theater desires to create a multi-cultural effort that promises to build community engagement in the arts and promote development in Columbia Heights through outstanding artistic productions that appeal to a wide audience. (Exhibit 30, Testimony of R. Medrano, Tr. pp.31-33)

37. Maudine Cooper, President and CEO of The Greater Washington Urban League ("Urban League"), by written submission and testimony, supported the project. The Urban League's support was based on the application's ability to create and attract jobs and economic development in Ward 1. The Urban League urged the Zoning Commission to approve the project as quickly as possible. (Testimony of M. Cooper, Tr. pp. 90-93)

38. Shelore Williams, Principal of Saint Augustine Catholic School located at 3215 13th Street, N.W., testified in support of the project. Ms. Williams noted that the current R-4 zoning for the Subject Property has not produced any residential development for the past 20 years. Ms. Williams testified that the community supports the grocery store on the site and a development that benefits the community. (Testimony of S. Williams, Tr. pp. 99-102)

39. Bobby Cherry, a resident of 2801 14th Street, N.W. and a representative of NCBA Estates, a housing complex for seniors, testified in support of the application. Mr. Cherry supported the project based on the improved services and improvements to the neighborhood that will occur as a result of the zoning map change. (Exhibit 42, Testimony of B. Cherry, Tr. p. 95)

40. Mack James, ANC/SMD Commissioner 1A04, testified in support of the project. Mr. James noted the broad community support for the application and the community's desire for improved services and economic development in the Columbia Heights neighborhood. (Exhibit 42, Testimony of M. James, Tr. pp. 96-97)

41. Lenwood Johnson, ANC/SMD Commissioner 1A10, testified in support of the project. Mr. Johnson noted that the application meets the neighbors, residents, and business leaders of Columbia Heights' goals of creating service, housing, retail, and cultural uses in the neighborhood. Mr. Johnson also noted that the application will

stimulate economic development and the creation of jobs in the area. (Exhibit 42, Testimony of L. Johnson, Tr. pp. 103-104)

42. Jacqueline Argelis, ANC/SMD Commissioner 1A01 (the Single Member District Commissioner for the Subject Property), testified in support of the project. Ms. Argelis noted the ANC's support for the project as well as the support of the larger Columbia Heights residential community. Ms. Argelis asked the Commission to approve the application in order to help expedite the process of community economic development. (Exhibit 42, Testimony of J. Argelis, Tr. p. 37)

43. Eric Graye, President of STI, testified in opposition to the application. Mr. Graye requested that the application not be processed until the Federal Section 106 Historic Preservation Review process has been completed. Mr. Graye testified that the proposed application is inconsistent with the Comprehensive Plan and the Urban Renewal Plan. Mr. Graye also testified that the application would have an adverse impact on the historic district and the historic Tivoli Theater. (Exhibit 35, Testimony of E. Graye, Tr. pp. 105-116)

44. Ten residents of the 1200 and 1300 blocks of Monroe Street, N.W. testified against the application. In general, these residents opposed the application because of the expansion of the C-3-A District into the adjacent residential neighborhood. The witnesses in opposition also testified to the visual, traffic, and parking impacts that would occur as a result of increased commercial development in Square 2837. (Exhibits 36-39, 45)

45. In response to issues raised by Commissioners during the December 17, 2001, public hearing, the record of the case was left open for the following materials and information:

- Copies of the photographs that were included as attachments to the Office of Planning's report (to be submitted by the Office of Planning);
- A copy of the Urban Renewal Plan for the 14th Street Urban Renewal Area (to be submitted by STI);
- Materials presented to the Historic Preservation Review Board regarding the proposed designation of a Columbia Heights Historic District (to be submitted by STI);
- A letter from the Federal Advisory Council on Historic Preservation regarding the Section 106 Historic Process and the Zoning Map Amendment application process occurring simultaneously (to be submitted by Patricia Meyer);

- An addendum to the traffic impact analysis prepared by Gorove/Slade Associates to address the impact of lane closures on 13th Street, N.W. (to be submitted by the applicant);
- A drawing depicting the development parameters for the proposed R-5-B and C-3-A Districts and the potential visual impact on adjacent properties (to be submitted by the applicant); and
- Information regarding the subdivision of Square 2837 into record lots so as to avoid the creation of split-zoned lots (to be submitted by the applicant). (Tr. pp. 183-185)

46. The applicant submitted the post-hearing information and materials requested by the Commissioners on January 10, 2002. In this submission, the applicant provided the following information.

- A drawing that depicts the development parameters for the proposed R-5-B and C-3-A Districts and the potential visual impact on adjacent properties. This drawing also includes a line-of-sight analysis from the adjacent properties on Monroe Street;
- An updated Traffic Impact Analysis, prepared by Gorove/Slade Associates. The updated analysis concludes that the traffic diverted from the lane closure along 13th Street, N.W. will not cause any of the intersection approaches near Square 2837 along 14th Street, N.W. to operate below an acceptable level of service; and
- An application for lot subdivision filed with the D.C. Surveyor's Office on January 3, 2002. This subdivision application requests the creation of two record lots for the property proposed to be rezoned. One record lot (the larger of the two with frontage on Park Road) will include all of the land area to be rezoned to the C-3-A District and a second record lot (fronting on Monroe Street) will include all of the land area to be rezoned to the R-5-B District. The applicant noted that it expected that the proposed C-3-A and R-5-B lots will be finalized prior to the Zoning Commission's final action in this case. (Exhibit 48)

47. STI submitted the post-hearing information and materials requested by the Commission on January 10, 2002. In this submission, STI also included a discussion of the Section 106 Historic Review Process. (Exhibit 47.)

48. On January 24, 2002, the applicant submitted a response to the STI submission of January 10, 2002. The applicant's response stated that the STI's description of the Section 106 Historic Review Process was not accurate. The applicant's

response noted that the Section 106 Historic Review Process is a consultative process that allows for public participation in considering the effects of federal undertakings on historic resources. The Section 106 process cannot mandate preservation and is not a process that can prohibit projects from moving forward. The applicant's letter also noted that the Section 106 process has already begun with regard to the treatment of the interior of the Tivoli Theater building and that the Section 106 process simply has no bearing on the proposed Zoning Map Amendment application. (Exhibit 49)

49. The Tivoli Theater is on the National Register of Historic Places and is a District of Columbia Category II Landmark.

50. The Columbia Heights neighborhood surrounding Square 2837 has been working with the D.C. Historic Preservation Office to be eligible for listing on the National Register of Historic Places.

51. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self Government and Governmental Reorganization Act. The NCPC, by action dated March 7, 2002, found that the proposed PUD would not adversely affect the federal establishment or other federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

Section 6-641.01 of the D.C. Code, 2001 Ed., establishes the authority of the Zoning Commission "to promote the health, safety, morals, convenience, order, prosperity or general welfare of the District of Columbia." Based upon the above findings of fact, the Commission concludes that approval of the requested change in zoning from the R-4 to C-3-A and R-5-B Districts is not inconsistent with the Comprehensive Plan for the National Capital and the purposes of the Zoning Act. The approval of the application will promote orderly development in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map.

The Commission also concludes that the proposed rezoning is consistent with the Comprehensive Plan, specifically the various provisions of the Land Use, Transportation, Housing, Economic Development, Historic Preservation, and Ward 1 Elements described in this order. In addition, the proposed change in zoning is fully consistent with the Generalized Land Use Map's designation of the Subject Property as mixed-use; medium-density commercial, and medium-density residential.

The areas of the Zoning Map that are amended to the R-5-B and C-3-A Districts shall be as shown on the proposed subdivision plat submitted by the applicant to the D.C. Surveyor's Office on January 3, 2002. The approval of this Zoning Map Amendment is

appropriate because the application is consistent with the present character of the surrounding area. Based on the Zoning Commission's review of the line-of-sight analysis submitted by the applicant, the Commission concludes that the proposed R-5-B District along Monroe Street is appropriate. The Zoning Commission also concludes that in order to create an adequately sized C-3-A parcel on the Subject Property, it is necessary to continue the C-3-A District on the Subject Property east to Holmead Place on the southern end of the Subject Property. The Commission believes that the establishment of the proposed C-3-A and R-5-B Districts is consistent with the pattern of zoning districts that exists throughout the 14th Street corridor.

The Zoning Commission also notes the Traffic Impact Study and Addendum prepared by the applicant. Due to the Subject Property's location on a major arterial into and out of the City, as well as its location in close proximity to the Columbia Heights Metro Station, the Commission concludes that the proposed amendment to the Zoning Map is not likely to adversely affect the traffic and parking patterns in the area.

The Commission also concludes that the proposed Zoning Map Amendment is consistent with the goals and policies of the Urban Renewal Plan. Specifically, the proposed Zoning Map Amendment application is fully consistent with the Subject Property's designation as a MCSC area.

The Commission takes note of Advisory Neighborhood Commission (ANC) 1A's resolution in support of the project and has accorded to the ANC's decision the "great weight" consideration to which it is entitled.

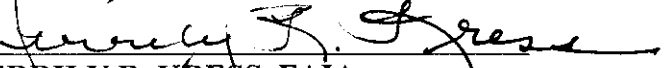
Vote of the Zoning Commission taken at its public meeting on February 11, 2002: by a vote of **4-0-1**, (Anthony J. Hood, Peter G. May, and James H. Hannaham to **APPROVE**; Carol J. Mitten to **APPROVE** by absentee ballot; John G. Parsons not voting, having not participated in the case).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on March 11, 2002, by a vote of **4-0-1** (Carol J. Mitten, Peter G. May, Anthony J. Hood, and James H. Hannaham to adopt; John G. Parsons not voting, having not participated in the case).

The rezoning shall become effective upon the recordation of the subdivision as shown in the record of this case. (Exhibit 48)

In accordance with the provisions of 11 DCMR 3028, this Order shall become final and effective upon publication in the D.C. Register on APR 26 2002.


CAROL J. MITTEN
Chairman,
Zoning Commission


JERRILY R. KRESS, FAIA
Director
Office of Zoning